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Industry Circular



Internal Revenue Service

Alcohol and Tobacco Tax Division
Washington, D.C. 20224

Industry Circular No. 68-36

December 31, 1968

Public Law 90-630

Proprietors of distilled spirits plants,
importers, wholesale liquor dealers,
and others concerned:

Purpose. The purpose of this circular is to inform you that a notice of proposed rule making to amend 26 CFR Part 186, Gauging Manual; 26 CFR Part 194, Liquor Dealers; 26 CFR Part 201, Distilled Spirits Plants; 26 CFR Part 251, Importation of Distilled Spirits, Wines, and Beer; and 26 CFR Part 252, Exportation of Liquors, was published in the Federal Register for December 27, 1968.

Background. The proposed amendments would implement the provisions of Public Law 90-630 which amended sections 5008(c), 5062(b), and 5232 of the Internal Revenue Code, effective February 1, 1969. Section 5008(c) was amended to extend the provisions relating to losses by reason of flood, fire, or other disaster, to losses occurring after bottling and casing or other packaging but before removal from the premises of the distilled spirits plant to which removed from bond. Section 5062(b) was amended to delete the requirement that distilled spirits must be bottled or packaged especially for export with benefit of drawback and to provide that the claim for drawback may be filed only by the bottler or packager of the spirits. Section 5232 was amended to permit the transfer of imported distilled spirits, regardless of proof, in bulk containers from customs custody to internal revenue bond without payment of the internal revenue tax imposed by section 5001(a)(1), I.R.C. Products of Puerto Rico and the Virgin Islands are subject to tax under section 7652, I.R.C., and the transfer of such products to internal revenue bond is not authorized. These changes are of particular interest to proprietors of distilled spirits plants; the changes in section 5232 are also of interest to importers; and the changes in section 5062(b) are also of interest to wholesalers who export taxpaid distilled spirits.

The principal changes to be made by the proposed regulations, and how these changes would affect your operations, are discussed below in conjunction with the law changes.

Amendment of Section 5008(c)(1), I.R.C.

Prior to this amendment the tax imposed by section 5001(a)(1), I.R.C., on spirits lost at a distilled spirits plant by reason of flood, fire, or other disaster could be abated, remitted, or, without interest, credited or refunded only if the loss occurred before completion of the bottling and casing or packaging of the spirits for removal from the bottling premises.

As a result of the change in law, claims may be filed for losses of spirits due to flood, fire, or other disaster which occur on (1) bottling premises, (2) additional control premises (established under § 170.52), or (3) wholesale liquor dealer premises on general plant premises (as provided by § 201.119), before removal of the spirits from the distilled spirits plant. The loss provisions of section 5008(c)(1), I.R.C., however, would not be applicable to spirits which were (1) bottled or packaged by the proprietor and which were removed from and returned to his distilled spirits plant, or (2) bottled or packaged at a distilled spirits plant other than the plant to which the spirits were removed from bond.

Under Section 4 of Public Law 90-630, the amendment to section 5008(c)(1), I.R.C., applies only to losses sustained on or after February 1, 1969.

Amendment of Section 5062(b), I.R.C.

Because of the changes in law, the export drawback procedures in 26 CFR Parts 194, 201, and 252 would be changed extensively. All regulatory requirements respecting export storage premises and the notice of transfer of spirits between such premises would be deleted. Spirits in export storage as of the close of business January 31, 1969, would be accounted for as a part of the bottler's or wholesale liquor dealer's regular stock after that date. Such spirits may be exported with benefit of drawback under the law and regulations in effect at the time of the exportation but would not be eligible for domestic use unless rebottled or restamped, labeled and marked for such use.

A bottler would not have to stamp or restamp and mark spirits especially for export unless he is removing the spirits from his bottling premises for direct exportation with benefit of drawback. Also, where spirits originally intended for domestic use are to be exported with benefit of drawback, the strip stamps on the bottles could be overprinted by rubber stamp or other suitable methods in lieu of restamping the bottled spirits. Such overprinting could be done either by the bottler or by an exporter who may or may not be the bottler. Notwithstanding the person who does such overprinting, the exporter must place export marks, essentially the same as now prescribed, on each case before removal for export. Such marks shall be in addition to the case marks prescribed in 26 CFR Part 201.

Under the proposed regulations, and as provided by the law, claims for export drawback may be filed only by the bottler or packager of the spirits. Thus, the proposed procedures would provide that the exporter, if he is not the bottler or packager, would prepare the notice of shipment on Form 1582 (Rev. 2-69) and furnish two copies of the form to the bottler or packager of the spirits who will compute the rate of drawback, complete Parts II and III on both copies of the form, and file one copy as the claim for drawback with his assistant regional commissioner. In support of his claim, and of his computation of the drawback rate, the bottler or packager will furnish with the claim, as applicable, a copy of the batch record, Form 122; the bottling record, Form 2637; and the package gauge report, Form 2630. A copy of Form 122, 2637, or 2630 will no longer be furnished to the assistant regional commissioner, for drawback purposes, at the time of the bottling or packaging of the spirits.

Under Section 4 of Public Law 90-630, the amendment to section 5062(b), I.R.C., applies only to spirits exported on or after February 1, 1969.

Amendment of Section 5232, I.R.C.

Under the amendment of this section of law, imported spirits transferred to internal revenue bond (1) may not be bottled in bond under section 5233, I.R.C., (2) may be redistilled or denatured only if of 185 degrees or more of proof, and (3) may be withdrawn for any purpose authorized by chapter 51, I.R.C., in the same manner as domestic spirits.

A proprietor who desires to withdraw imported spirits of less than 185 degrees of proof for transfer to his bonded premises will have to furnish a consent of surety on his bond to cover such withdrawals and transfers, but only if his bond was effective before February 1, 1969.

The Form 2609 procedure for the withdrawal of imported spirits from customs custody and the Form 236 procedure for the transfer of such spirits to internal revenue bond have not been changed. However, for the first time, imported spirits of any proof may be received on bonded premises for beverage use and removed therefrom for any purpose authorized by chapter 51, I.R.C., in the same manner as domestic spirits. The proposed regulations prescribe procedures for the identification and separation of imported spirits from domestic spirits, and procedures respecting the storage in and withdrawal from bond of imported spirits. These procedures are discussed below:

1. Each package of imported spirits when received on bonded premises from customs custody, or when filled on bonded premises, must be marked with (a) the name of the importer, (b) the country of origin, (c) the kind of spirits, (d) the package serial number, (e) the date of original entry, (f) the date filled, if filled on bonded premises, (g) the proof, and (h) the wine gallons of spirits in the package. For packages received from customs custody, the package serial number will be prefixed with the symbol "IMP" and identification of the plant, e.g., "IMP-12-IND-1." For packages filled on bonded premises, the serial number and distinguishing prefix as provided in § 201.514, will be preceded by the symbol "IMP."

2. The name of the warehouseman who received the spirits from customs custody would be the means of identifying imported spirits in the warehouse records and summaries of deposits and withdrawals required by §§ 201.628 and 201.629 and on all transaction and gauge forms, where such forms require the name of the producer, blender or warehouseman to be stated.

3. Since section 5232, I.R.C., provides that imported spirits transferred to bonded premises may be withdrawn from bond in the same manner as domestic spirits, new procedure would be prescribed for gauging spirits, particularly with respect to taxpayment gauges. In order that the tax determination gauges upon withdrawal from bond of both domestic spirits and imported spirits could be made in the same manner, the proposed rule making would provide that the proof of spirits in bond shall be determined on the basis of apparent proof by use of a hydrometer and thermometer except that (1) if the spirits contain solids in excess of 400 milligrams but not in excess of 600 milligrams per 100 milliliters at gauge proof, the proof shall be determined on the basis of apparent proof plus proof obscuration, or (2) if the spirits contain solids in excess of 600 milligrams per 100 milliliters at gauge proof, the true proof shall be determined by distillation or by a laboratory method. In those cases where determination of true proof is required, such determination would be made by the proprietor under the direct supervision of the assigned officer.

The proposed regulations would also provide that, before imported spirits are offered for tax determination, the proprietor must furnish the assigned officer a statement, executed under the penalties of perjury, as to the solids content of such spirits. If the solids content of the spirits is not more than 400 milligrams, or is in excess of 600 milligrams, per 100 milliliters, the solids content may be stated as: "Solids content not in excess of 400 milligrams per 100 milliliters" or "Solids content in excess of 600 milligrams per 100 milliliters" as the case may be. If the spirits contain solids in excess of 400 milligrams but not in excess of 600 milligrams per 100 milliliters, the actual solids content of the spirits, expressed in milligrams per 100 milliliters, shall be stated. The solids content so reported may be determined by the proprietor or determined by another person for him. In any case, determinations of solids content and true proof made by the proprietor may be verified through analysis by Government chemists of samples taken by the assigned officer.

4. Because certain imported spirits, such as cordials and liqueurs, will have a solids content much higher than domestic spirits now stored in internal revenue bond, which condition would make inapplicable the present Table No. 4 of the Gauging Manual, new procedures would be prescribed for determining the wine gallons per pound of spirits having a high solids content. The proposed rule making would provide that where the solids content of spirits exceeds 600 milligrams per 100 milliliters, the wine gallons per pound of such spirits will be ascertained by (a) use of a precision hydrometer and a thermometer to determine the apparent proof of the spirits and then reference to Table No. 4 of the Gauging Manual for the wine gallons per pound, or (b) use of a Brix saccharometer and a thermometer to determine the degrees Brix and then reference to a new Table No. 9, to be added to the Gauging Manual, for the wine gallons per pound. Method (a) can be used only when the specific gravity of the spirits is not more than 1.0 and method (b) can only be used when the specific gravity is more than 1.0.

If a proprietor receives on his bonded premises imported spirits which have a specific gravity of more than 1.0, and such spirits are to be gauged in bond, he will have to furnish a set of Brix saccharometers for use of assigned officers, as outlined in Industry Circular No. 68-34.

Under Section 4 of Public Law 90-630, the amendment to section 5232, I.R.C., applies only to withdrawals from customs custody on or after February 1, 1969.

Status of Forms. Forms are being revised and should be available by February 1, 1969, as follows:

<u>Form No.</u>	<u>Title</u>
122*	Bottler's Dump and Batch Record
1582	Drawback on Distilled Spirits Exported
2637*	Bottling Tank Report
2731	Monthly Report of Bonded Storage Operations

*These forms are obtained through commercial printers. Since the changes affect the instructions rather than the lines and columns on the form, existing stocks of the forms may continue to be used until exhausted.

Other forms will need to be revised to reflect changes resulting from the changes in law and regulations, but the changes are of such nature that immediate revision is not necessary. These forms will be revised when they are next considered for reprint and are as follows:

<u>Form No.</u>	<u>Title</u>
179	Withdrawal of Spirits Taxpaid
236	Transfer of Spirits or Denatured Spirits in Bond
332	Statement by Kind, Seasons, and Years of Production of Spirits in Bonded Warehouses (NO-CF:AT-42)
338	Wholesale Liquor Dealer's Monthly Report
696	Customs Gauge Report
1577	Destructions of Spirits (Including Denatured Spirits)
1621	Summary of Deposits and Withdrawals at Bonded Warehouse
2629	Gauge Report
2630	Package Gauge Report

Form 1656, Transfer of Distilled Spirits Bottled or Packaged, or Restamped and Marked, Especially for Export, will no longer be used and will be declared obsolete.

Inquiries regarding this Industry Circular should refer to its number and be addressed to the office of your Assistant Regional Commissioner, Alcohol, Tobacco and Firearms.

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